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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/811,606

03/29/2004

Mark A. Neilson

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2825

32300 7590 03/20/2007

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EXAMINER

BRINEY III, WALTER F

ART UNIT

PAPER NUMBER

2615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/811,606

Applicant(s)

NEILSON, MARK A.

Examiner

Walter F. Briney III

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/29/04 and 10/17/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. **Claims 1-6, 10-12, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Carbe et al. (US Patent 5,278,360).**

Claim 1 is limited to “a customizable cerumen guard for a hearing aid.” The examiner makes reference to U.S. Patent 5,278,360 (hereafter Carbe). Carbe discloses a hearing aid wax (cerumen) guard with integral bridge. See Abstract. As seen in figure 1, the hearing aid includes “a shell” 16, “a receiver tube” 30 connected to “a receiver” (not shown). See column 2, lines 50-52. The hearing aid housing 16 clearly includes “an aperture” in which housing element 12 resides, which corresponds to “an insert adapted to be inserted into the shell aperture.” The insert 12 comprises “a chamber” 46, “a receiver aperture adapted to communicate with the receiver tube 30” around numeral 24 and “an ear canal aperture adapted to communicate with the ear of the wearer,” which is seen in figure 1 around identifier 22. Into the ear canal aperture of insert 12 one inserts wax guard insert 14, corresponding to a “cap covering the ear canal aperture.” It is noted that the cap 14 is replaceable (interchangeable). See column 3, lines 50-57. Moreover, the cap is “customizable” as filters, such as those

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seen in figures 7a and 7b, may be inserted at will. See column 3, lines 29-45.

Therefore, Carbe anticipates all limitations of the claim.

Claim 2 is limited to "the customizable cerumen guard of claim 1," as covered by Carbe. Insert 12 is mounted in housing 16 using adhesive; as such, insert 12 "is permanently mounted in the shell aperture." See column 3, lines 50-52. Therefore, Carbe anticipates all limitations of the claim.

Claim 3 is limited to "the customizable cerumen guard of claim 2," as covered by Carbe. Insert 12 is mounted in housing 16 using adhesive; as such, insert 12 "is permanently mounted in the shell aperture." See column 3, lines 50-52. Therefore, Carbe anticipates all limitations of the claim.

Claim 4 is limited to "the customizable cerumen guard of claim 2," as covered by Carbe. Insert 12 is mounted in housing 16 using adhesive; as such, insert 12 "is permanently mounted in the shell aperture." See column 3, lines 50-52. Moreover, whether insert 12 was "screwed into the shell aperture" before insert 12 was adhered in place is not limiting on the structure of either the housing 16 or insert 12, but rather a limitation on the manner of assembly. One could have screwed insert 12 into place within housing 16 for no reason or because the shell aperture was a little tight for insert 12, and insert 12 had to be screwed in. However, this is not limiting on the final assembly. Therefore, Carbe anticipates all limitations of the claim.

Claim 5 is limited to "the customizable cerumen guard of claim 1," as covered by Carbe. As noted in the rejection of claim 1, the hearing aid wax guard of Carbe includes "a plurality of cerumen-trapping accessories are insertable into the chamber 46" of

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housing 12. Specifically, a plate 66 and filter 70/72 are insertable. See column 3, lines 29-45. Therefore, Carbe anticipates all limitations of the claim.

Claim 6 is limited to "the customizable cerumen guard of claim 5," as covered by Carbe. As shown in the rejection of claims 1 and 5, the ear wax guard of Carbe includes "a wax filter" 70/72. See column 3, lines 37-45. Therefore, Carbe anticipates all limitations of the claim.

Claim 10 is limited to "a customizable cerumen guard for a hearing aid." This cerumen guard is essentially the same as the cerumen guard shown to be anticipated by Carbe in claims 1-3. Therefore, Carbe anticipates all limitations of the claim.

Claims 11 and 12 are limited to "the customizable cerumen guard of claim 10," as covered by Carbe. These two claims correspond directly to the cerumen guard of claims 5 and 6, as covered by Carbe, and are rejected for the same reasons. Therefore, Carbe anticipates all limitations of the claims.

Claim 16 is limited to "a customizable cerumen guard for a hearing aid." This cerumen guard is essentially the same as the cerumen guard shown to be anticipated by Carbe in claims 1, 2, 4 and 5. Therefore, Carbe anticipates all limitations of the claim.

Claim 17 is limited to "the customizable cerumen guard of claim 16," as covered by Carbe. This claim corresponds directly to the cerumen guard of claim 6, as covered by Carbe, and is rejected for the same reasons. Therefore, Carbe anticipates all limitations of the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 7-9, 13-15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carbe in view of Haertl (US Patent 4,987,597).**

Claim 7 is limited to "the customizable cerumen guard of claim 1," as covered by Carbe. It is noted that the cap disclosed by Carbe includes but one central opening 48, not "a mesh." See column 3, lines 5-28. However, this deficiency is overcome by an obvious modification.

In particular, it has been established that art recognized equivalence between two solutions serves as a foundation for obviousness. In this case an art recognized equivalence exists between the use of a single central opening and a mesh containing a plurality of openings in wax guard caps. Specifically, US Patent 4,987,597 (hereafter Haertl) teaches an apparatus for closing openings of a hearing aid or an ear adaptor for hearing aids. Several caps are depicted in figures 4-15. The caps of figures 5 and 9, for instance, comprise single central openings while the caps of figures 11 and 13 comprise a mesh opening. The caps are blandly described, with no recognized advantage to using a cap with a single opening or a plurality of openings. See column 3, line 54, through column 4, line 25.

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It would have been obvious to one of ordinary skill in the art at the time of the invention to embody the cap 14 of Carbe with a plurality of openings forming a mesh as seen in figures 11 and 13 of Haertl as the use of a mesh opening is an art recognized equivalent to a single opening:

Claim 8 is limited to "the customizable cerumen guard of claim 7," as covered by Carbe. As seen in figures 4 and 6 of Carbe, the cap 14 includes "a chamber" 46 in which "a cerumen-spreading device 66 insertable into the chamber adjacent the mesh" is placed. See column 3, lines 29-36. Therefore, Carbe in view of Haertl makes obvious all limitations of the claim.

Claim 9 is limited to "the customizable cerumen guard of claim 1," as covered by Carbe. It is noted that the cap disclosed by Carbe includes but one central opening 48, not "a central opening and a plurality of peripheral openings." See column 3, lines 5-28. However, this deficiency is overcome by an obvious modification.

In particular, it has been established that art recognized equivalence between two solutions serves as a foundation for obviousness. In this case an art recognized equivalence exists between the use of a single central opening and a central opening and a plurality of peripheral openings. Specifically, Haertl teaches an apparatus for closing openings of a hearing aid or an ear adaptor for hearing aids. Several caps are depicted in figures 4-15. The caps of figures 5 and 9, for instance, comprise single central openings while the caps of figures 11 and 13 comprise a single opening and a plurality of peripheral openings. The caps are blandly described, with no recognized

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advantage to using a cap with a single opening or a plurality of openings. See column 3, line 54, through column 4, line 25.

It would have been obvious to one of ordinary skill in the art at the time of the invention to embody the cap 14 of Carbe with a central opening and a plurality of peripheral openings as seen in figures 11 and 13 of Haertl as the use of a mesh opening is an art recognized equivalent to a single opening.

Claims 13-15 are limited to "the customizable cerumen guard of claim 10," as covered by Carbe. These three claims correspond directly to the cerumen guard of claims 7-9, as covered by Carbe in view of Haertl, and are rejected for the same reasons. Therefore, Carbe in view of Haertl makes obvious all limitations of the claims.

Claims 18-20 are limited to "the customizable cerumen guard of claim 16," as covered by Carbe. These three claims correspond directly to the cerumen guard of claims 7-9, as covered by Carbe in view of Haertl, and are rejected for the same reasons. Therefore, Carbe in view of Haertl makes obvious all limitations of the claims.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter F. Briney III whose telephone number is 571-272-7513. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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